

UNITED STATES DISTRICT COURT OF CALIFORNIA
EASTERN DISTRICT OF CALIFORNIA

PATRICIA ROCHA,
Plaintiff,

v.
LOWE'S COMPANIES, INC., DOES
1 TO 10,
Defendants.

Case No.: 1:20-CV-00642-AWI-SKO
Tulare Superior Court Case No.:
281846

PROTECTIVE ORDER

The Court having read the parties' Joint Stipulation for the Entry of a Protective Order, and good cause appearing, the Court hereby enters the following protective order:

1. A. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly, the parties acknowledge that this Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable

1 legal principles. The parties further acknowledge, as set forth in Section 12.3,
2 below, that this Order does not entitle them to file confidential information under
3 seal. Rather, when the parties seek permission from the court to file material under
4 seal, the parties must comply with Civil Local Rule 141 and with any pertinent
5 orders of the assigned District Judge and Magistrate Judge.

6 **B. GOOD CAUSE STATEMENT**

7 Federal Rules of Civil Procedure, Rule 26(c)(1) states in pertinent part, that
8 the Court, upon a showing of good cause may “issue an order to protect a party from
9 annoyance, embarrassment, oppression, or undue burden or expense.” Fed.R.Civ.P.
10 26(c)(1). In the instant matter, Defendant Lowe’s Home Centers, LLC’s
11 Confidential Documents contain proprietary and confidential trade secret
12 information relating to Defendant Lowe’s Home Centers, LLC’s business practices
13 and its safety protocol. Defendant Lowe’s Home Centers, LLC. (“Defendant” or
14 “Lowe’s”) derives independent economic value from maintaining the confidentiality
15 of the policies and procedures set forth in these Confidential Documents.

16 Defendant is a retailer in the home improvement industry and has conducted
17 business in California since 1998. The home improvement retail industry is very
18 competitive. As a result of years of investing time and money in research and
19 investigation, Defendant developed the policies contained in the Confidential
20 Documents for the purposes of maintaining the security and accessibility of its
21 merchandise, providing quality customer service, and ensuring the safety of its
22 employees and customers. These policies and procedures, as memorialized in the
23 Confidential Documents, were created and generated by Lowe’s for Lowe’s, and are
24 used for the purposes of maintaining safety at its stores and creating efficient and
25 organized work environments for its employees. As a result, Defendant is able to
26 minimize the waste of any resources, which is a key factor in generating profitability
27 for its business.

28 Defendant derives economic value from maintaining the secrecy of its

1 Confidential Documents. If disclosed to the public, the trade secret information
2 contained in Defendant's Confidential Documents would reveal Defendant's
3 internal operations and could potentially be used by competitors as a means to
4 compete for its customers, interfere with its business plans and thereby gain unfair
5 business advantages. If Defendant's safety protocol were revealed to the general
6 public, it would hinder Defendant's ability to effectively resolve and minimize
7 liability claims, and its goal of protecting its customers and employees from theft
8 and other crimes. Unrestricted or unprotected disclosure of such information would
9 result in prejudice or harm to Defendant by revealing Lowe's competitive
10 confidential information, which has been developed at the expense of Lowe's and
11 which represents valuable tangible and intangible assets. Accordingly, the parties
12 respectfully submit that there is good cause for the entry of this Protective Order.

13 2. DEFINITIONS

14 2.1 Action: The instant action: Patricia Rocha v. Lowe's Home Centers,
15 LLC., et al, Case No: 1:20-CV-00642-AWI-SKO.

16 2.2 Challenging Party: a Party or Non-Party that challenges the
17 designation of information or items under this Order.

18 2.3 "CONFIDENTIAL" Information or Items: information (regardless of
19 how it is generated, stored or maintained) or tangible things that qualify for
20 protection under Federal Rule of Civil Procedure 26(c), and as specified above in
21 the Good Cause Statement.

22 2.4 Counsel: Outside Counsel of Record and House Counsel (as well as
23 their support staff).

24 2.5 Designating Party: a Party or Non-Party that designates information or
25 items that it produces in disclosures or in responses to discovery as
26 "CONFIDENTIAL."

27 2.6 Disclosure or Discovery Material: all items or information, regardless
28 of the medium or manner in which it is generated, stored, or maintained (including,

1 among other things, testimony, transcripts, and tangible things), that are produced or
2 generated in disclosures or responses to discovery in this matter.

3 2.7 Expert: a person with specialized knowledge or experience in a matter
4 pertinent to the litigation who has been retained by a Party or its counsel to serve as
5 an expert witness or as a consultant in this Action.

6 2.8 House Counsel: attorneys who are employees of a party to this Action.
7 House Counsel does not include Outside Counsel of Record or any other outside
8 counsel.

9 2.9 Non-Party: any natural person, partnership, corporation, association, or
10 other legal entity not named as a Party to this action.

11 2.10 Outside Counsel of Record: attorneys who are not employees of a
12 party to this Action but are retained to represent or advise a party to this Action and
13 have appeared in this Action on behalf of that party or are affiliated with a law firm
14 which has appeared on behalf of that party, and includes support staff.

15 2.11 Party: any party to this Action, including all of its officers, directors,
16 employees, consultants, retained experts, and Outside Counsel of Record (and their
17 support staffs).

18 2.12 Producing Party: a Party or Non-Party that produces Disclosure or
19 Discovery Material in this Action.

20 2.13 Professional Vendors: persons or entities that provide litigation
21 support services (e.g., photocopying, videotaping, translating, preparing exhibits or
22 demonstrations, and organizing, storing, or retrieving data in any form or medium)
23 and their employees and subcontractors.

24 2.14 Protected Material: any Disclosure or Discovery Material that is
25 designated as "CONFIDENTIAL."

26 2.15 Receiving Party: a Party that receives Disclosure or Discovery
27 Material from a Producing Party.

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1 3. SCOPE

2 The protections conferred by this Order cover not only Protected Material (as
3 defined above), but also (1) any information copied or extracted from Protected
4 Material; (2) all copies, excerpts, summaries, or compilations of Protected Material;
5 and (3) any deposition testimony, conversations, or presentations by Parties or their
6 Counsel that might reveal Protected Material, other than during a court hearing or at
7 trial.

8 Any use of Protected Material during a court hearing or at trial shall be
9 governed by the orders of the presiding judge. This Order does not govern the use
10 of Protected Material during a court hearing or at trial.

11 4. DURATION

12 Even after final disposition of this litigation, the confidentiality obligations
13 imposed by this Order shall remain in effect until a Designating Party agrees
14 otherwise in writing or a court order otherwise directs. Final disposition shall be
15 deemed to be the later of (1) dismissal of all claims and defenses in this Action, with
16 or without prejudice; and (2) final judgment herein after the completion and
17 exhaustion of all appeals, rehearings, remands, trials, or reviews of this Action,
18 including the time limits for filing any motions or applications for extension of time
19 pursuant to applicable law.

20 5. DESIGNATING PROTECTED MATERIAL

21 5.1 Exercise of Restraint and Care in Designating Material for Protection.
22 Each Party or Non-Party that designates information or items for protection under
23 this Order must take care to limit any such designation to specific material that
24 qualifies under the appropriate standards. The Designating Party must designate for
25 protection only those parts of material, documents, items, or oral or written
26 communications that qualify so that other portions of the material, documents,
27 items, or communications for which protection is not warranted are not swept
28 unjustifiably within the ambit of this Order.

1 Mass, indiscriminate, or routinized designations are prohibited. Designations
2 that are shown to be clearly unjustified or that have been made for an improper
3 purpose (e.g., to unnecessarily encumber the case development process or to impose
4 unnecessary expenses and burdens on other parties) may expose the Designating
5 Party to sanctions.

6 If it comes to a Designating Party's attention that information or items that it
7 designated for protection do not qualify for protection, that Designating Party must
8 promptly notify all other Parties that it is withdrawing the inapplicable designation.

9 5.2 Manner and Timing of Designations. Except as otherwise provided in
10 this Order (see, e.g., second paragraph of Section 5.2(a) below), or as otherwise
11 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection
12 under this Order must be clearly so designated before the material is disclosed or
13 produced.

14 Designation in conformity with this Order requires:

15 (a) for information in documentary form (e.g., paper or electronic
16 documents, but excluding transcripts of depositions), that the Producing Party affix
17 at a minimum, the legend "CONFIDENTIAL" (hereinafter "CONFIDENTIAL
18 legend"), to each page that contains protected material. If only a portion or portions
19 of the material on a page qualifies for protection, the Producing Party also must
20 clearly identify the protected portion(s) (e.g., by making appropriate markings in the
21 margins).

22 A Party or Non-Party that makes original documents available for inspection
23 need not designate them for protection until after the inspecting Party has indicated
24 which documents it would like copied and produced. During the inspection and
25 before the designation, all of the material made available for inspection shall be
26 deemed "CONFIDENTIAL." After the inspecting Party has identified the
27 documents it wants copied and produced, the Producing Party must determine which
28 documents, or portions thereof, qualify for protection under this Order. Then, before

1 producing the specified documents, the Producing Party must affix the
2 “CONFIDENTIAL legend” to each page that contains Protected Material. If only a
3 portion or portions of the material on a page qualifies for protection, the Producing
4 Party also must clearly identify the protected portion(s) (e.g., by making appropriate
5 markings in the margins).

6 (b) for testimony given in depositions that the Designating Party identifies
7 on the record, before the close of the deposition as protected testimony.

8 (c) for information produced in some form other than documentary and
9 for any other tangible items, that the Producing Party affix in a prominent place on
10 the exterior of the container or containers in which the information is stored the
11 legend “CONFIDENTIAL.” If only a portion or portions of the information
12 warrants protection, the Producing Party, to the extent practicable, shall identify the
13 protected portion(s).

14 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
15 failure to designate qualified information or items does not, standing alone, waive
16 the Designating Party’s right to secure protection under this Order for such material.
17 Upon timely correction of a designation, the Receiving Party must make reasonable
18 efforts to assure that the material is treated in accordance with the provisions of this
19 Order.

20 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

21 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
22 designation of confidentiality at any time that is consistent with the Court’s
23 Scheduling Order.

24 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
25 resolution process under Local Rule 251et seq.

26 6.3 The burden of persuasion in any such challenge proceeding shall be on
27 the Designating Party. Frivolous challenges, and those made for an improper
28 purpose (e.g., to harass or impose unnecessary expenses and burdens on other

1 parties) may expose the Challenging Party to sanctions. Unless the Designating
2 Party has waived or withdrawn the confidentiality designation, all parties shall
3 continue to afford the material in question the level of protection to which it is
4 entitled under the Producing Party's designation until the Court rules on the
5 challenge.

6 7. ACCESS TO AND USE OF PROTECTED MATERIAL

7 7.1 Basic Principles. A Receiving Party may use Protected Material that is
8 disclosed or produced by another Party or by a Non-Party in connection with this
9 Action only for prosecuting, defending, or attempting to settle this Action. Such
10 Protected Material may be disclosed only to the categories of persons and under the
11 conditions described in this Order. When the Action has been terminated, a
12 Receiving Party must comply with the provisions of Section 13 below.

13 Protected Material must be stored and maintained by a Receiving Party at a
14 location and in a secure manner that ensures that access is limited to the persons
15 authorized under this Order.

16 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless
17 otherwise ordered by the court or permitted in writing by the Designating Party, a
18 Receiving Party may disclose any information or item designated
19 "CONFIDENTIAL" only to:

20 (a) the Receiving Party's Outside Counsel of Record in this Action, as
21 well as employees of said Outside Counsel of Record to whom it is reasonably
22 necessary to disclose the information for this Action;

23 (b) the officers, directors, and employees (including House Counsel) of
24 the Receiving Party to whom disclosure is reasonably necessary for this Action;

25 (c) Experts (as defined in this Order) of the Receiving Party to whom
26 disclosure is reasonably necessary for this Action and who have signed the
27 "Acknowledgment and Agreement to Be Bound" (Exhibit A);

28 (d) the court and its personnel;

1 (e) court reporters and their staff;

2 (f) professional jury or trial consultants, mock jurors, and Professional
3 Vendors to whom disclosure is reasonably necessary for this Action and who have
4 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

5 (g) the author or recipient of a document containing the information or a
6 custodian or other person who otherwise possessed or knew the information;

7 (h) during their depositions, witnesses, and attorneys for witnesses, in the
8 Action to whom disclosure is reasonably necessary provided: (1) the deposing party
9 requests that the witness sign the “Acknowledgment and Agreement to Be Bound”
10 form attached as Exhibit A hereto; and (2) they will not be permitted to keep any
11 confidential information unless they sign the “Acknowledgment and Agreement to
12 Be Bound” attached as Exhibit A, unless otherwise agreed by the Designating Party
13 or ordered by the court. Pages of transcribed deposition testimony or exhibits to
14 depositions that reveal Protected Material may be separately bound by the court
15 reporter and may not be disclosed to anyone except as permitted under this
16 Protective Order; and

17 (i) any mediator or settlement officer, and their supporting personnel,
18 mutually agreed upon by any of the parties engaged in settlement discussions.

19 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN
20 OTHER LITIGATION

21 If a Party is served with a subpoena or a court order issued in other litigation
22 that compels disclosure of any information or items designated in this Action as
23 “CONFIDENTIAL,” that Party must:

24 (a) promptly notify in writing the Designating Party. Such notification
25 shall include a copy of the subpoena or court order unless prohibited by law;

26 (b) promptly notify in writing the party who caused the subpoena or order
27 to issue in the other litigation that some or all of the material covered by the
28 subpoena or order is subject to this Protective Order. Such notification shall include

1 a copy of this Protective Order; and

2 (c) cooperate with respect to all reasonable procedures sought to be
3 pursued by the Designating Party whose Protected Material may be affected.

4 If the Designating Party timely seeks a protective order, the Party served with
5 the subpoena or court order shall not produce any information designated in this
6 action as “CONFIDENTIAL” before a determination by the court from which the
7 subpoena or order issued, unless the Party has obtained the Designating Party’s
8 permission, or unless otherwise required by the law or court order. The Designating
9 Party shall bear the burden and expense of seeking protection in that court of its
10 confidential material and nothing in these provisions should be construed as
11 authorizing or encouraging a Receiving Party in this Action to disobey a lawful
12 directive from another court.

13 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE
14 PRODUCED IN THIS LITIGATION

15 (a) The terms of this Order are applicable to information produced by a
16 Non-Party in this Action and designated as “CONFIDENTIAL.” Such information
17 produced by Non-Parties in connection with this litigation is protected by the
18 remedies and relief provided by this Order. Nothing in these provisions should be
19 construed as prohibiting a Non-Party from seeking additional protections.

20 (b) In the event that a Party is required, by a valid discovery request, to
21 produce a Non-Party’s confidential information in its possession, and the Party is
22 subject to an agreement with the Non-Party not to produce the Non-Party’s
23 confidential information, then the Party shall:

24 (1) promptly notify in writing the Requesting Party and the Non-Party
25 that some or all of the information requested is subject to a confidentiality
26 agreement with a Non-Party;

27 (2) promptly provide the Non-Party with a copy of the Protective
28 Order in this Action, the relevant discovery request(s), and a reasonably specific

1 description of the information requested; and

2 (3) make the information requested available for inspection by the
3 Non-Party, if requested.

4 (c) If a Non-Party represented by counsel fails to commence the process
5 called for by Local Rule 251, et seq. within 14 days of receiving the notice and
6 accompanying information or fails contemporaneously to notify the Receiving Party
7 that it has done so, the Receiving Party may produce the Non-Party's confidential
8 information responsive to the discovery request. If an unrepresented Non-Party fails
9 to seek a protective order from this court within 14 days of receiving the notice and
10 accompanying information, the Receiving Party may produce the Non-Party's
11 confidential information responsive to the discovery request. If the Non-Party
12 timely seeks a protective order, the Receiving Party shall not produce any
13 information in its possession or control that is subject to the confidentiality
14 agreement with the Non-Party before a determination by the court unless otherwise
15 required by the law or court order. Absent a court order to the contrary, the Non-
16 Party shall bear the burden and expense of seeking protection in this court of its
17 Protected Material.

18 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

19 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
20 Protected Material to any person or in any circumstance not authorized under this
21 Protective Order, the Receiving Party must immediately (a) notify in writing the
22 Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve
23 all unauthorized copies of the Protected Material, (c) inform the person or persons to
24 whom unauthorized disclosures were made of all the terms of this Order, and (d)
25 request such person or persons to execute the "Acknowledgment and Agreement to
26 Be Bound" that is attached hereto as Exhibit A.

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11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED MATERIAL

When a Producing Party gives notice to Receiving Parties that certain inadvertently produced material is subject to a claim of privilege or other protection, the obligations of the Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure may be established in an e-discovery order that provides for production without prior privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure of a communication or information covered by the attorney-client privilege or work product protection, the parties may incorporate their agreement into this Protective Order.

12. MISCELLANEOUS

12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to seek its modification by the Court in the future.

12.2 Right to Assert Other Objections. No Party waives any right it otherwise would have to object to disclosing or producing any information or item on any ground not addressed in this Protective Order. Similarly, no Party waives any right to object on any ground to use in evidence of any of the material covered by this Protective Order.

12.3 Filing Protected Material. A Party that seeks to file under seal any Protected Material must comply with Civil Local Rule 141 and with any pertinent orders of the assigned District Judge and Magistrate Judge. If a Party's request to file Protected Material under seal is denied by the court, then the Receiving Party may file the information in the public record unless otherwise instructed by the court.

13. FINAL DISPOSITION

After the final disposition of this Action, as defined in Section 4, within 60 days of a written request by the Designating Party, each Receiving Party must return

1 all Protected Material to the Producing Party or destroy such material. As used in
2 this subdivision, "all Protected Material" includes all copies, abstracts, compilations,
3 summaries, and any other format reproducing or capturing any of the Protected
4 Material. Whether the Protected Material is returned or destroyed, the Receiving
5 Party must submit a written certification to the Producing Party (and, if not the same
6 person or entity, to the Designating Party) by the 60 day deadline that (1) identifies
7 (by category, where appropriate) all the Protected Material that was returned or
8 destroyed and (2) affirms that the Receiving Party has not retained any copies,
9 abstracts, compilations, summaries or any other format reproducing or capturing any
10 of the Protected Material. Notwithstanding this provision, Counsel are entitled to
11 retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing
12 transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert
13 reports, attorney work product, and consultant and expert work product, even if such
14 materials contain Protected Material. Any such archival copies that contain or
15 constitute Protected Material remain subject to this Protective Order as set forth in
16 Section 4.

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1 14. Any violation of this Order may be punished by any and all appropriate
2 measures including, without limitation, contempt proceedings and/or monetary
3 sanctions.

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5 IT IS SO ORDERED.

6 Dated: August 10, 2020

/s/ Sheila K. Oberto
UNITED STATES MAGISTRATE JUDGE

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of

[print or type full address], declare under penalty of perjury that I have read in its entirety and understand the Protective Order that was issued by the United States District Court for the Eastern District of California on _____ in the case of Patricia Rocha vs. Lowe's Home Centers, LLC, et al., Case No: 1:20-CV-00642-AWI-SKO. I agree to comply with and to be bound by all the terms of this Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Protective Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Eastern District of California for the purpose of enforcing the terms of this Protective Order, even if such enforcement proceedings occur after termination of this action. I hereby appoint _____ [print or type full name] of _____ [print or type full address and telephone number] as my California agent for service of process in connection with this action or any proceedings related to enforcement of this Protective Order.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____